haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Othering, Belonging, and Structural Marginalization Racialization

PRESENTER:
john a. powell

DATE:
May 17, 2017

AUTHORIAL SUPPORT
Alyson Reimer, Stephen Menendian

Race & Law: Individuals & Intent

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

The Law is fundamentally individualistic

- The conception of racial discrimination under law is also individualistic

- Under law, racism is an event that occurs between discrete individuals with a focus on the psychological motivation of the prejudicial actor.

- Traditional Discrimination Model (3 parts)
  - Victim/perpetrator
  - Intent (purpose or motive)
  - Decision-maker self awareness

Credit: Stephen Menendian, "Innovating Inclusion: Advancing Racial Equity in an era of Structural Racism."

Race & Life: Systems & Outcomes

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- But must of racial and other forms of inequity are caused by systems and structures more than individual "bad apples."
- These practices, cultural norms and institutional arrangements help create and maintain (unfair) racialized outcomes
- Structural racialization refers to the ways in which the joint operation of institutions **produce** racialized outcomes
    - In this analysis, **outcomes** matter more than **intent**

Credit: Stephen Menendian, "Innovating Inclusion: Advancing Racial Equity in an era of Structural Racism."

Race & Life, continued…

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

The law has, at times, recognized this reality.

- Disparate Impact claims do not require intent, and recognize how inter-institutional arrangements can produce disparate outcomes. *See Griggs & ICP v. Texas DHCA.*

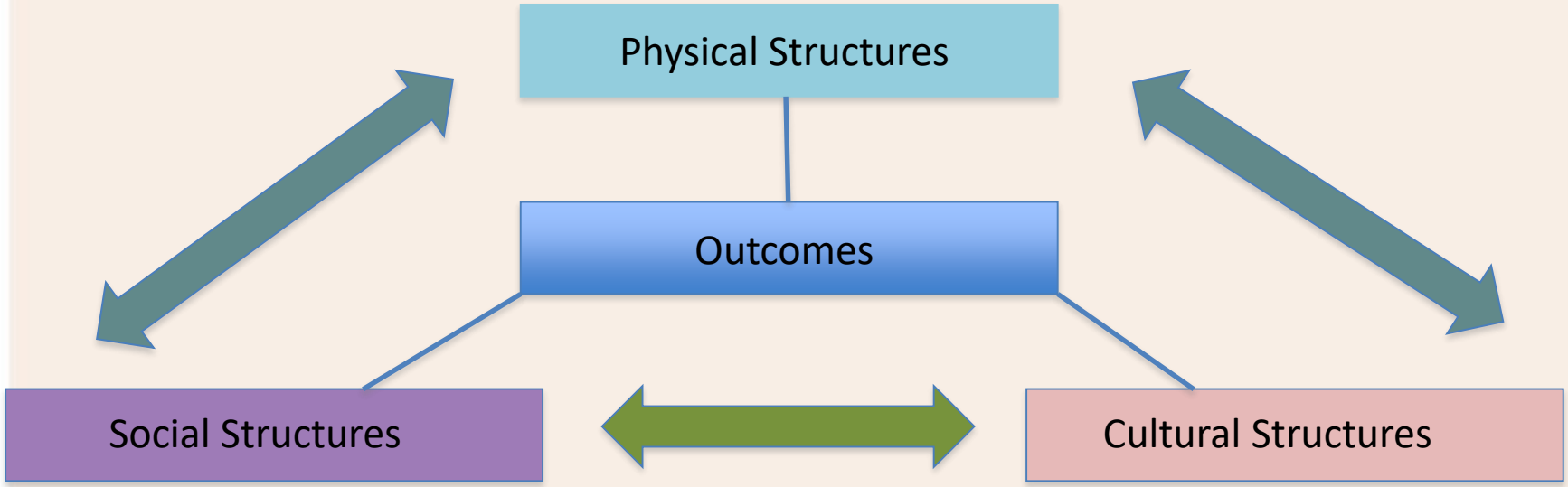
- International law – including the Convention on the Elimination of Racial Discrimination (CERD) – which the US has signed & ratified – takes a view that intent is not necessary for a remedy.

In order to improve the law, it is crucial to understand the roles of structures and systems in perpetuating racialized outcomes and better understand the mind.

Understanding Structures as Systems

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

We are all situated within structures but **not evenly**. Structures interact in ways that produce a differential in outcome. Structures unevenly distribute benefits and burdens to various groups. Institutions can operate jointly to produce negative outcomes.



Systems, Structures and Situatedness

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Not only are people situated differently with regard to institutions: people are situated differently with regard to infrastructure.

People are impacted by the relationships between institutions and systems…but people also impact these relationships and can change the structure of the system.

Place Matters

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- Decades of empirical research validate & illustrate a powerful series of relationships between family residence and an individual's projected life chances along a number of scales.

- The geographically varying set of institutions, systems and markets dramatically influence a person's achieved socioeconomic status. Together, these institutions, systems and markets constitute the **"opportunity structure."**

Opportunity Structures: Space, Place, & Life Outcomes

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- **Opportunity structures** are the web of influences beyond our individual control that enhance and constrain our ability to succeed and excel
- Life changes are shaped by opportunity structures, and those structures are just as important, if not more so, than the choices that individuals make. Indeed they effect our choices.

Structural Racialization

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

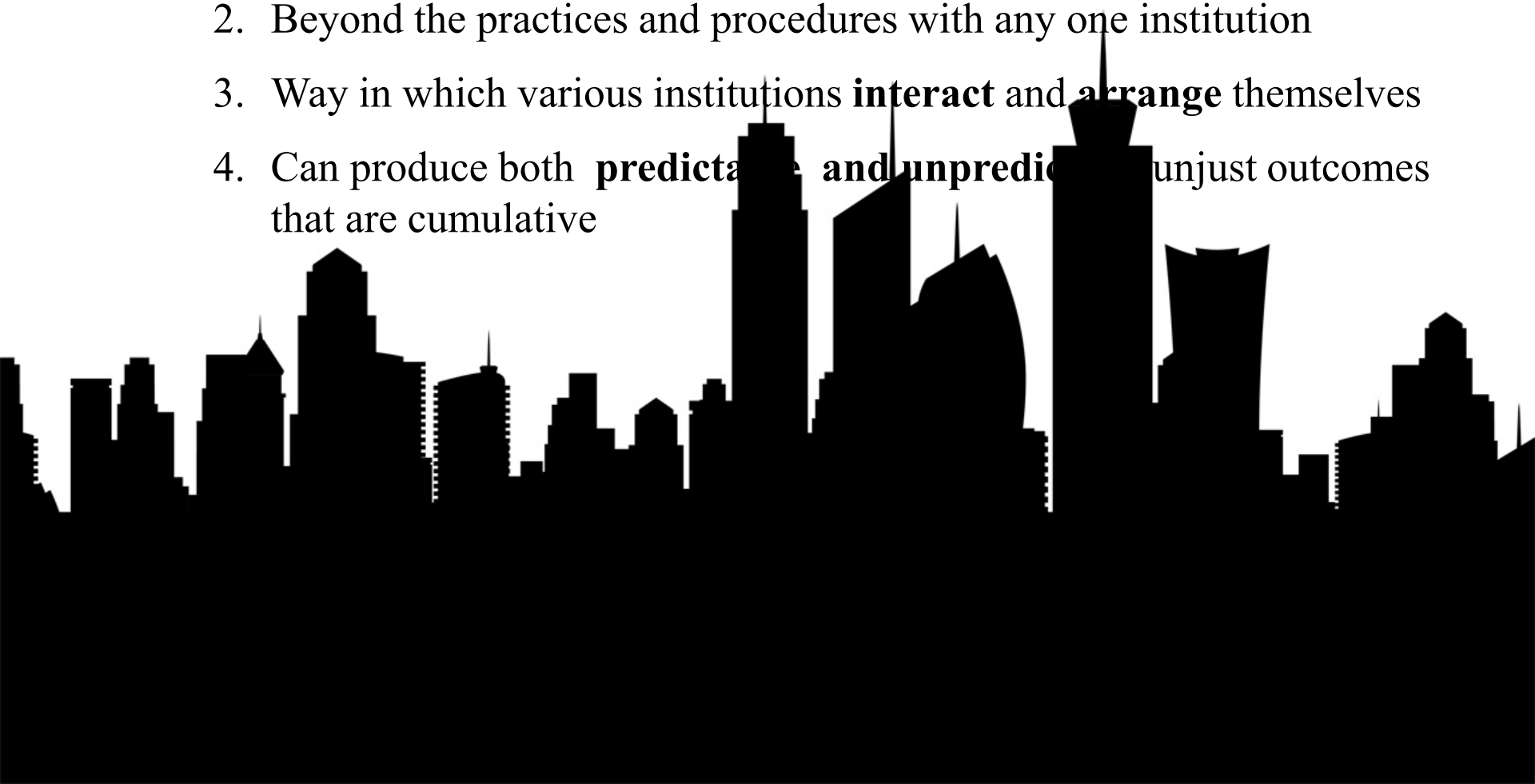
- Structural Racism: This is a claim that these opportunity structures are *racialized*, meaning that they *produce* and *reinforce* racial advantages and disadvantages.

- Structural Racialization: This is a term that acknowledges how race and racialized outcome can be produce without individual intentional acts. Structural racialization leads to marginalization (race, gender, ability, etc.) and blocked access to opportunity

- Although invidious discrimination persists, structural exclusion is the underlying problem. E.g., not enough teachers of color in the "pipeline" or enough workers of "color" in the labor market.

Credit: Stephen Menendian, "Innovating Inclusion: Advancing Racial Equity in an era of Structural Racism."

1. Not dependent on individual racialization
2. Beyond the practices and procedures with any one institution
3. Way in which various institutions **interact** and **arrange** themselves
4. Can produce both **predictable and unpredictable** unjust outcomes that are cumulative

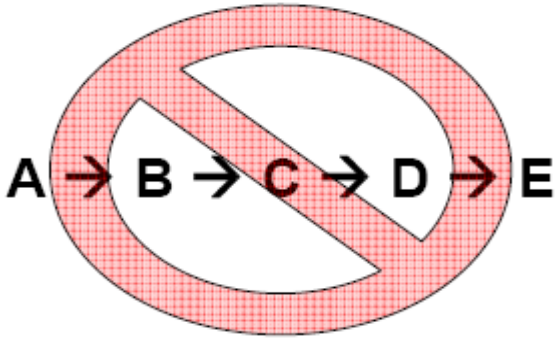


Introducing Systems Thinking

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

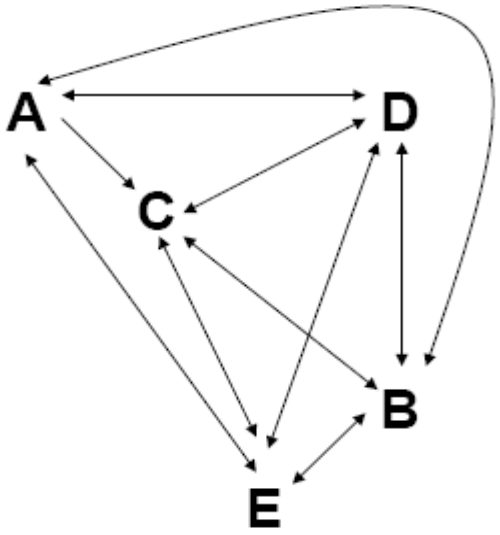
We need to think about the ways in which the institutions that mediate opportunity are arranged – systems thinking.

The Newtonian Perspective:



Social phenomena may be understood by breaking down the sum of the constituent parts.

Systems Thinking:



Causation is reciprocal, mutual, and cumulative.

Introducing Systems Thinking, continued.

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Example: A bird in a cage

Examining one wire cannot explain why a bird cannot fly.

But **multiple wires**, arranged in specific ways, reinforce each other and trap the bird.

Now think of the wires as interactive and dynamic

A More Complex Understanding

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

One Dimensional:

One variable explains differential outcomes

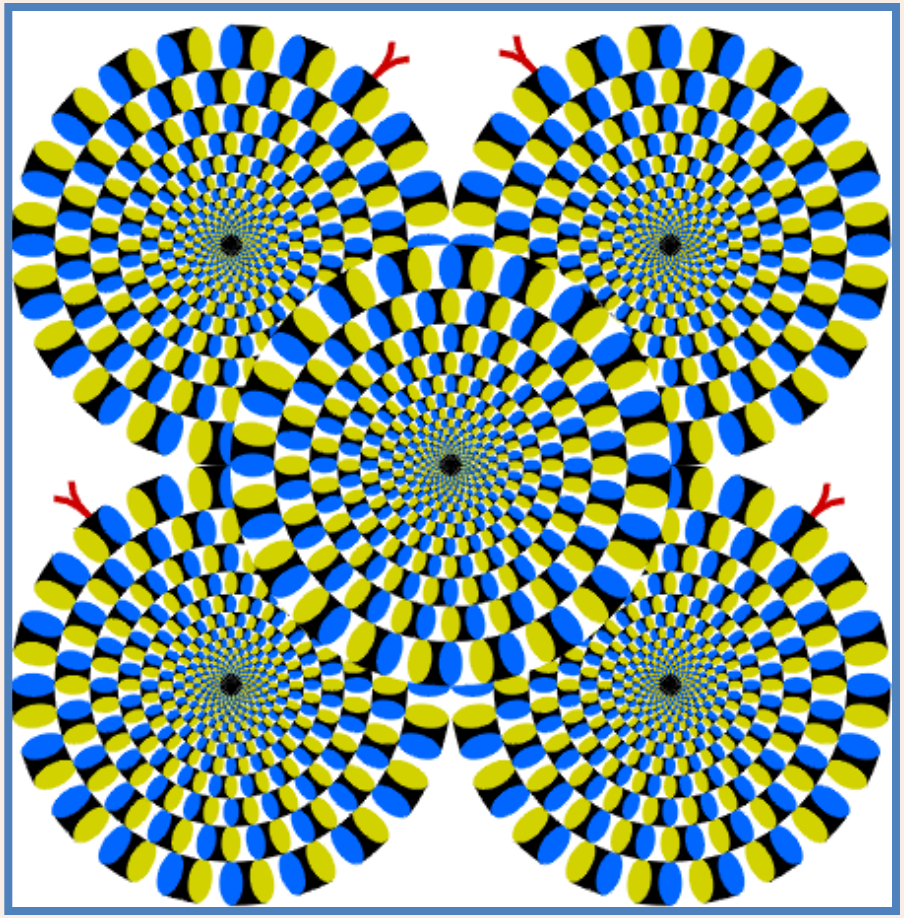
Multidimensional:

The individual bars working together to cage the bird

… to an understanding of *processes and relationships*

Complex Change Processes

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY



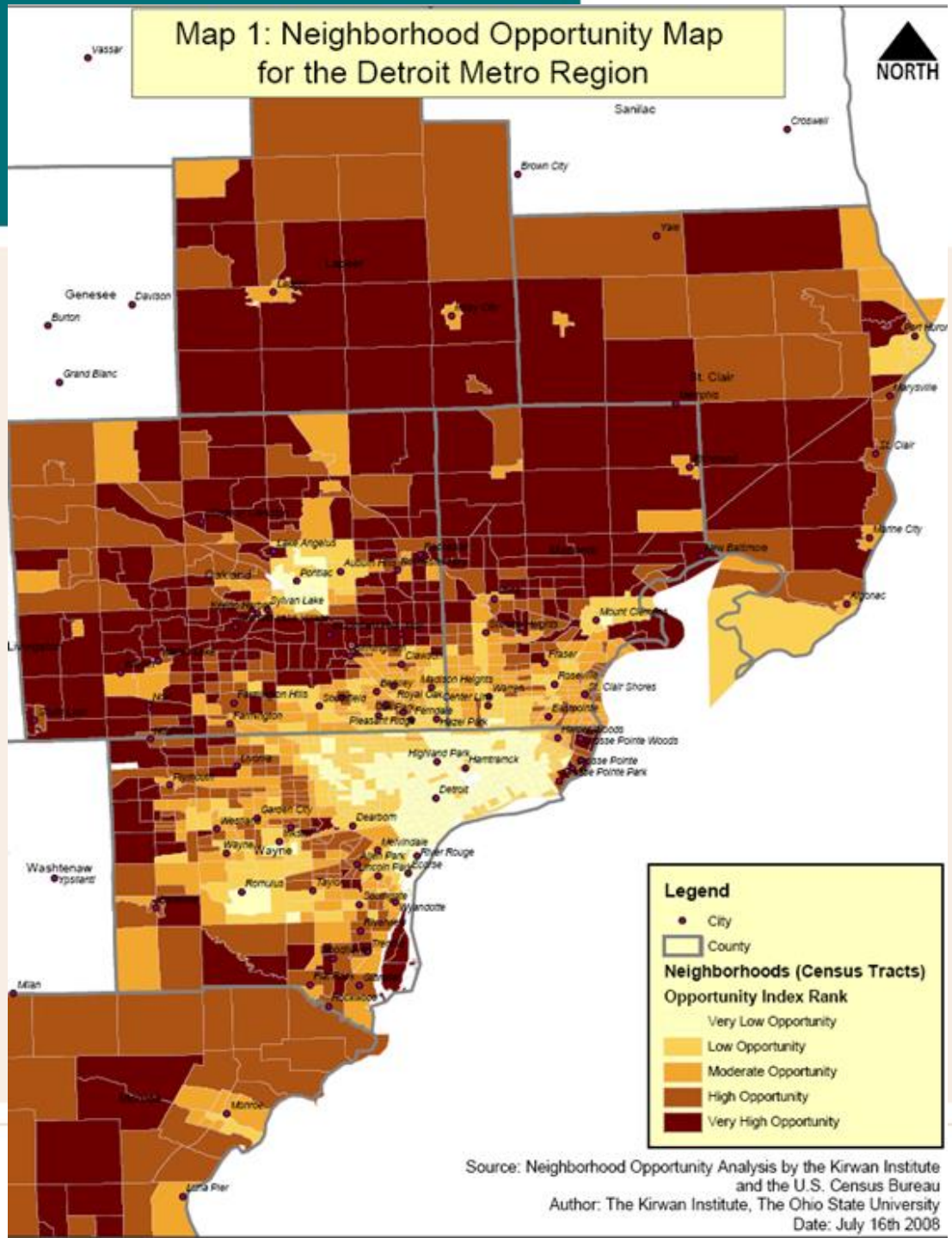
Relationships are neither static nor discrete

Think in **loops**, not just cause & effect

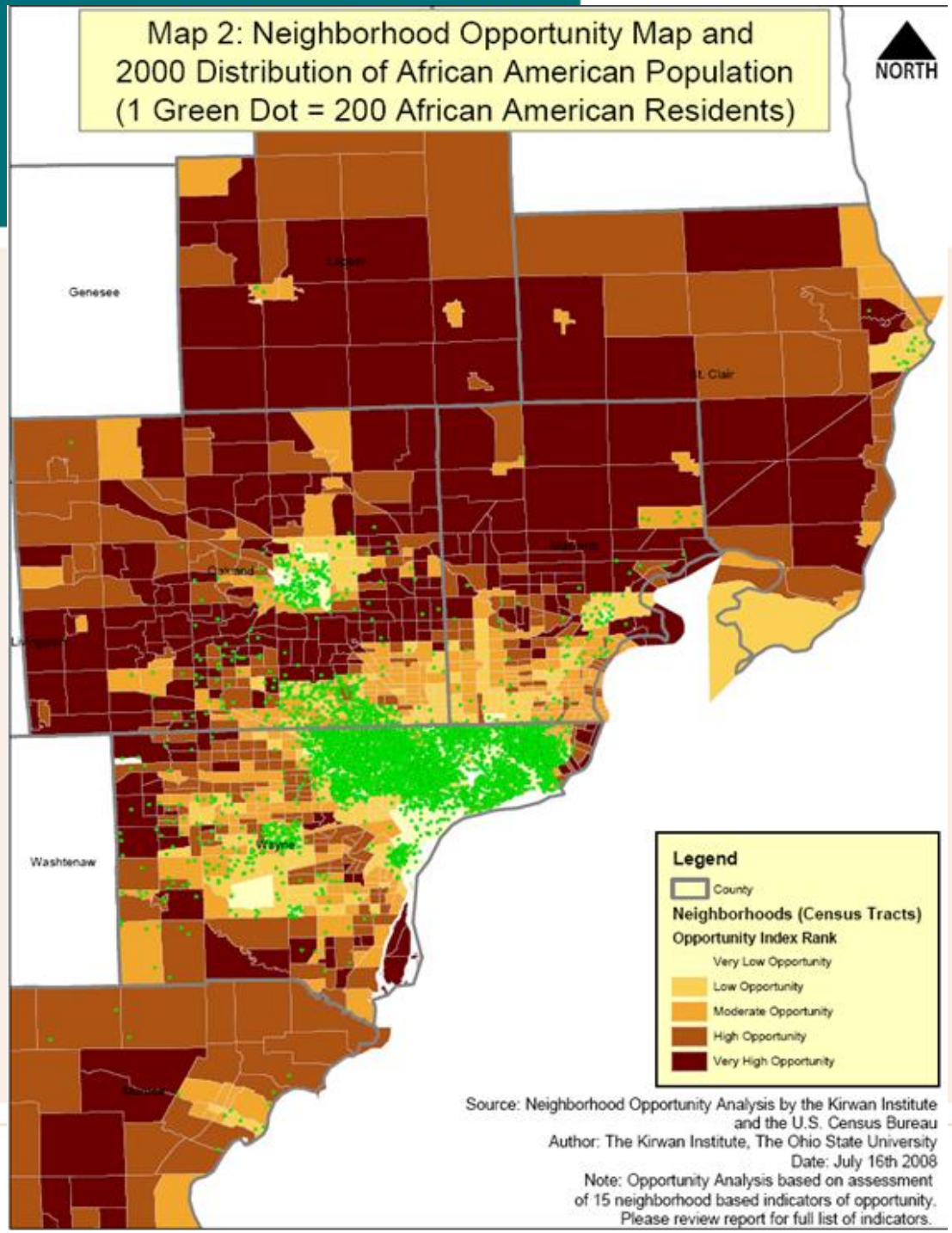
Disparities may be reinforcing

Gains in one area are often undone over time because of structures – not intent

Wealth Segregation & Opportunity



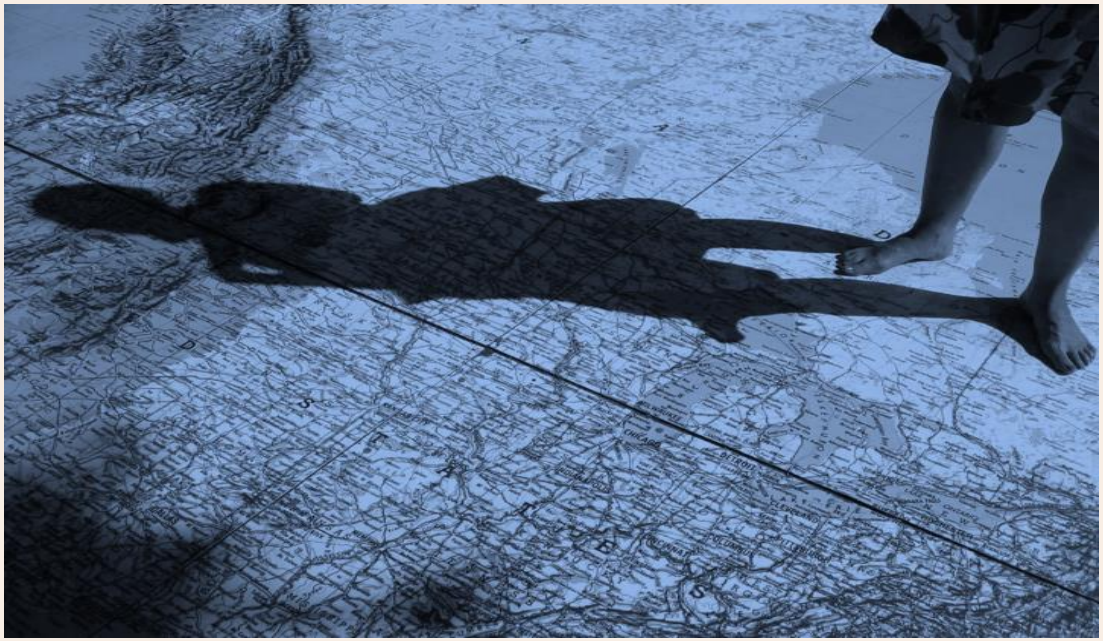
Spatial Racism in SE Michigan



Structural Racialization and Othering?

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Structural Racialization strongly related to Othering.



The problem of Othering is the problem of the 21st century.

"Othering," defined…

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

We define othering as a set of processes that consciously on unconsciously see a person or group as not belonging, different and often less than in some important way. This view gets reflected in structures and social resources.

Dimensions of othering

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Dimensions include but are not limited to, sex, religion, race, ethnicity, socioeconomic status, disability, sexual orientation, and skin tone.

Why do we engage in othering?

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Individuals, institutions, and structures engage in othering for many reasons, both intentionally and unintentionally. The law focuses primarily on intentional forms of othering, largely missing the majority of othering caused by unintentional factors like:

- Fear & anxiety
- categorizing
- stereotyping
- implicit bias
- in-group preference
- racial anxiety
- confirmation bias
- stereotype threat

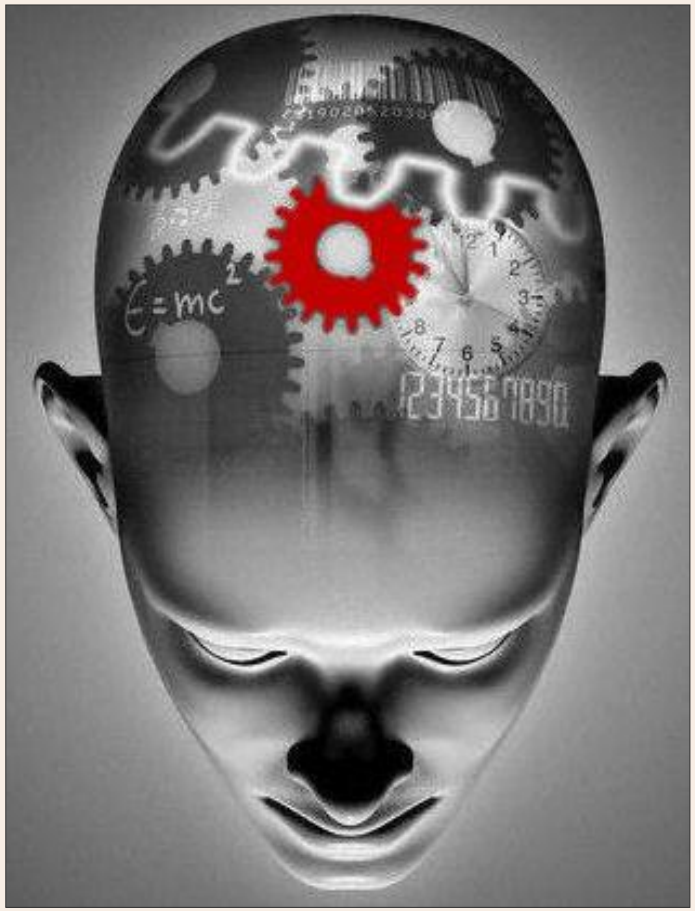
The role of the unconscious mind

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

The human brain processes 11 million bytes of information per second

- Consciously aware of any 40 of these, at best
- Only 2% of emotional cognition is available to us consciously
- Messages can be framed to speak to our unconscious
- The process of **Othering** occurs in our unconscious network: this can lead to racial, ethnic, or religious bias

See David Brooks, *The Social Animal* (2011)



The role of the unconscious mind, continued…

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

The subconscious mind uses three processes to make sense of the millions of bits of information that we perceive

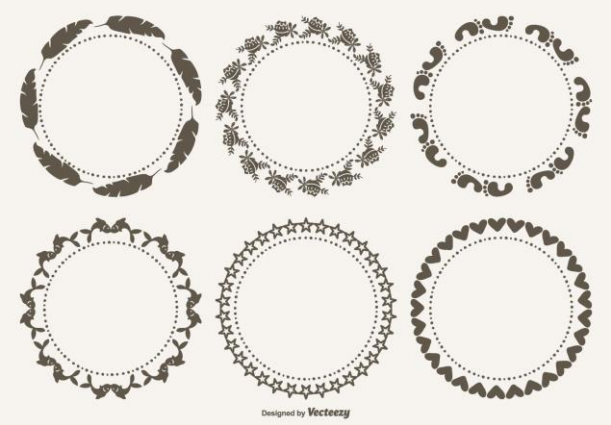
1. Sorting into categories
2. Creating associations between things
3. Filling in the gaps when we only receive partial information

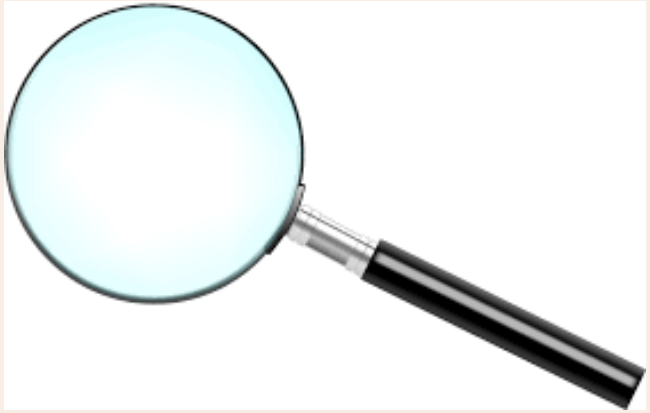
Schemas

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

These three processes together add up to schemas – the "frames" through which our brains help us understand and navigate the world.

- Schemas help us organize information into broader categories. Meanings associated with those category are then activated.
- Schemas are social. They exist in our environment, language, and metaphors
- The unconscious is not just an individual or internal phenomenon. It is socially habituated both reading and shaping environment.



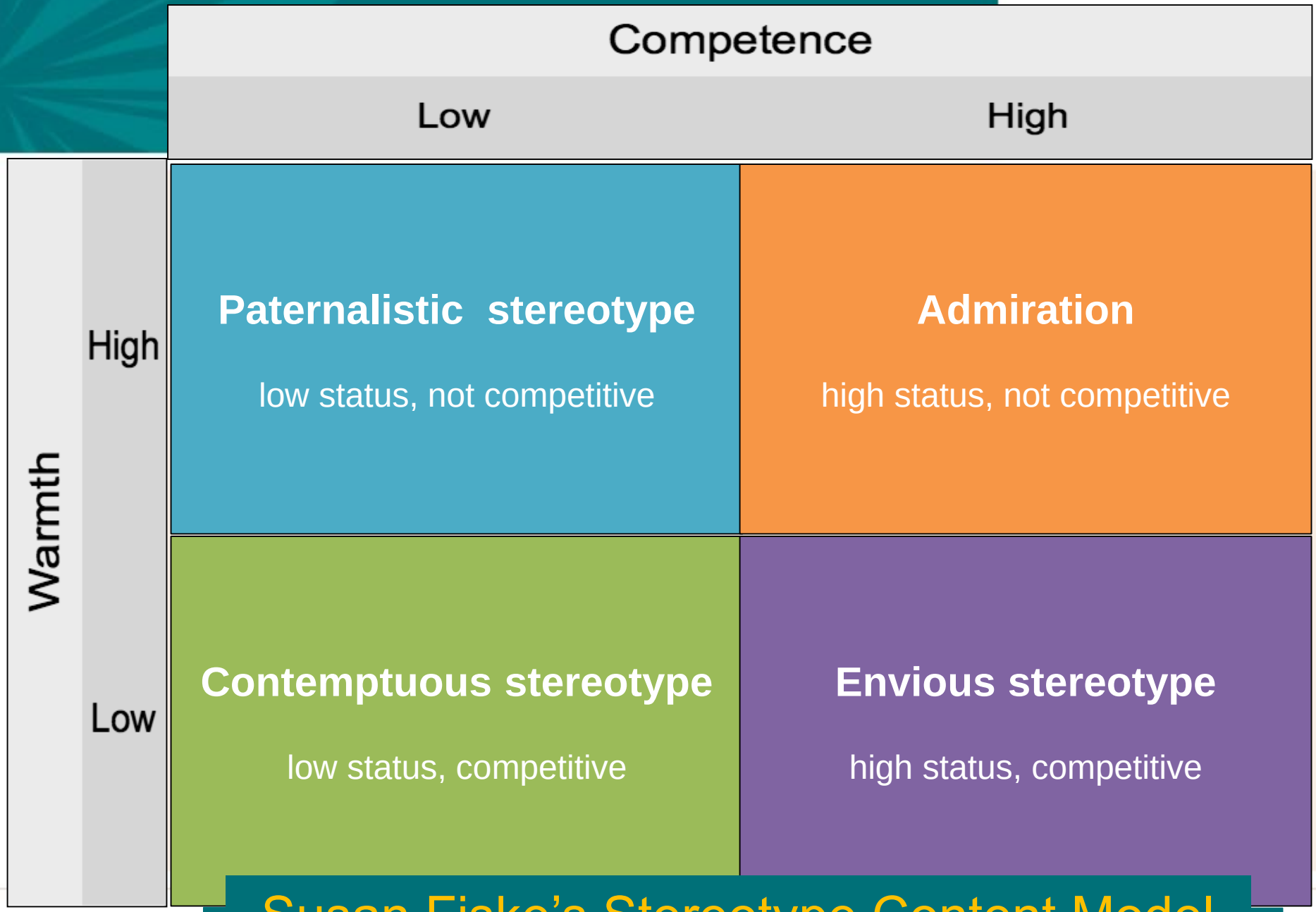


haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Face Priming

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Face Priming (Slow Motion)



Susan Fiske's Stereotype Content Model

Confirmation bias

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Confirmation Bias:

We judge behavior differently depending upon the stereotypes or negative associations.

Implicit Bias & Juror Decision Making

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Research provides powerful evidence of the existence of implicit racial bias and their impact in the courtroom. (Levingston & Young, 2010; Kang et al., 2012).

Even individuals– including judges, lawyers, and jurors– who are motivated to be objective are vulnerable to the impact of implicit bias. (Smith & Levinson, 2011).

Implicit bias can shape decisions that may contribute to the disconcerting racial disparities we see in the criminal justice system. (Levinson & Young, 2010).

Credit: Rachel Godsil & Song Richardson; The Perception Institute

Implicit Bias & Juror Decision Making, continued…

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Implicit bias can shape decisions that may contribute to the disconcerting racial disparities we see in the criminal justice system. (Levinson & Young, 2010).

However, substantial evidence suggests that the impact of implicit bias on juror decision making can be prevented.

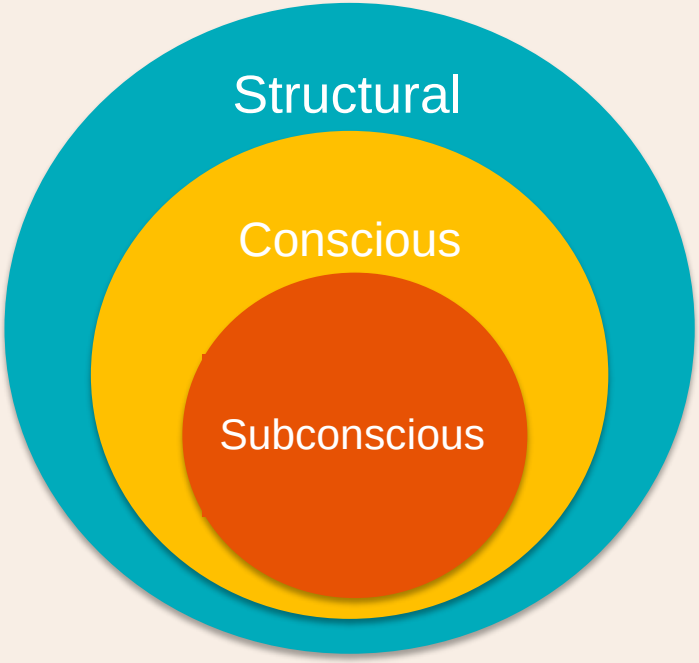
Credit: Rachel Godsil & Song Richardson; The Perception Institute

PERCEPTION INSTITUTE
Research. Representation. Reality. Perception.org

Stereotypes & biases: cognitively, we cannot avoid them!

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- Intelligence is associational and emotional: we cannot live without schemas
- Having biases and stereotypes, however, do not make us racist: it makes us human
- Working for equity and justice requires engaging at three levels
  - Structural
  - The conscious
  - The unconscious



Race in America: Where Are We Now?

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- ☑ Racial attitudes have **improved** significantly over time
- ☑ We have moved from segregation into a period of **racial egalitarianism**
- ☑ Interracial relationships are becoming more **acceptable**
- ☑ More elected black officials

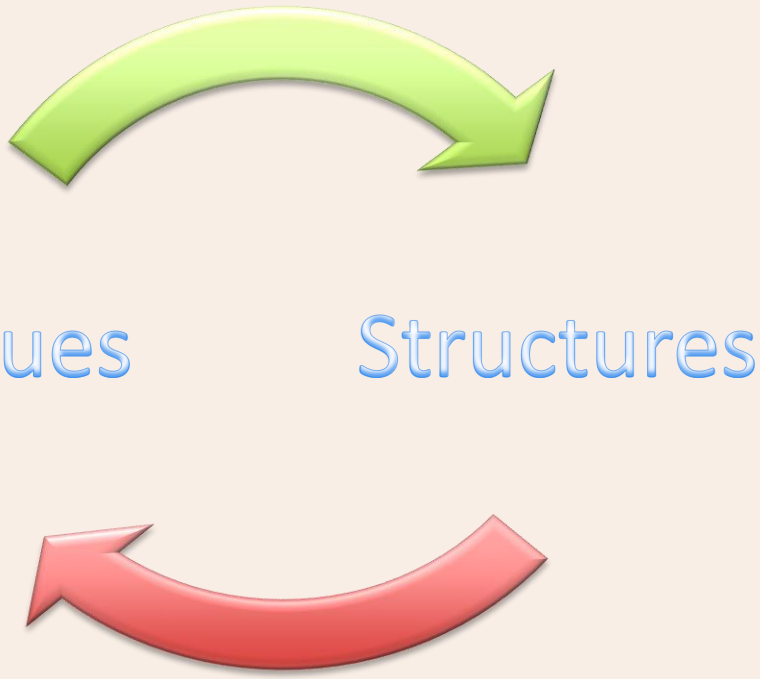
- ☒ Racial **minorities** report that they are still affected by racial **prejudice**
- ☒ Nationally, the black unemployment rate is **twice as high** as the white rate
- ☒ A black male born in 2001 has a **32%** chance of spending time in prison at some point in his life; a Hispanic male has a **17%** chance; and a while male has a **6%** chance

Acting on Our Values

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Our values and structures impact each other.

It's not enough to have the right values. We need the right structures.



"We need to make our structures reflect our best values."

Values vs. Reality

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

OUR VALUES

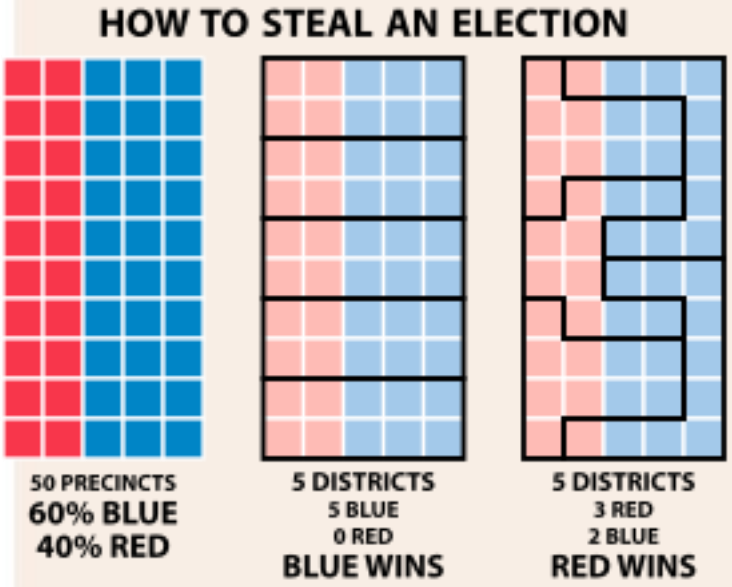
- All men are created equal
- With liberty and justice for all
- Government of the people, by the people, for the people, shall not perish from the earth
- One person, one vote

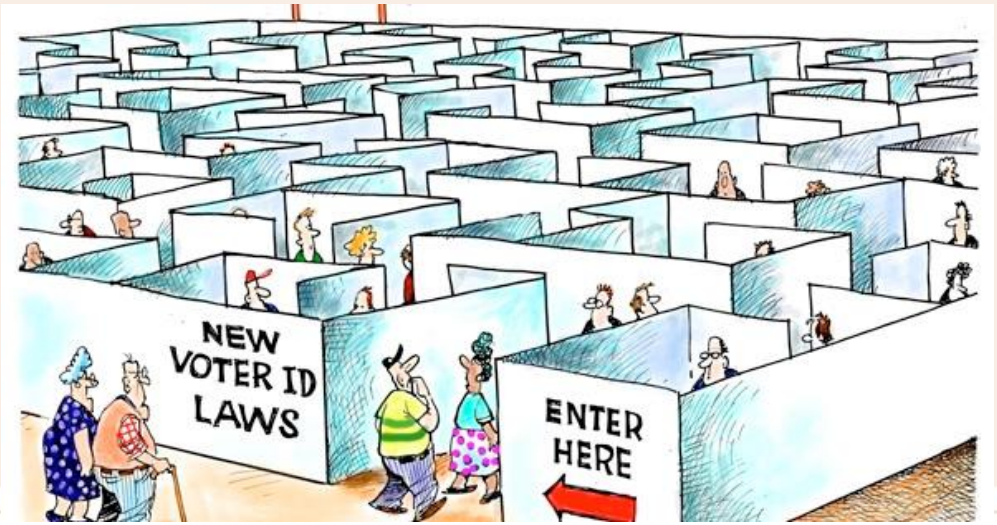
WARNING!

Warning: Values may not apply unless you are White, Male, Heterosexual, Christian, and Rich $$$

Values vs. Reality

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY





The Solution is Structural Inclusion

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Structural inclusion is a process by which institutions work in concert with each other to both remove barriers to inclusion, as well as develop organizational structures, policies, practices, and procedures that affirmatively further widespread inclusion and actively promote belonging. Here are some basic examples:

Removing Barriers: Make voting times and locations more accessible.

Actively Promote: HUD's AFFH Rule, (the duty to affirmatively further fair housing.)

Examples of Structural Inclusion in the Law

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

In response to nearly a century-long history of voter suppression and discrimination, Congress passed the Voting Rights Act of 1965.

•Two key provisions:

- Section 2: Prohibits "practices or procedures" that discriminate on the basis of race.

- Section 5: A prophylactic measure that requires covered jurisdictions to obtain preclearance from federal authorities before any change to voting processes and procedures take effect.

Examples of Structural Inclusion in the Law

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

The Americans with Disabilities Act is a prime example of structural inclusion in the law.

Like the VRA, it's purpose is two-fold: to prohibit discrimination based on disability, and prevent exclusionary discrimination by requiring affirmative action on the part of agencies, institutions, and employers to create accessible spaces and arrangements for persons with disabilities.

Mechanisms of Structural Inclusion

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Targeted Universalism, Equity 2.0

- What is Targeted Universalism?
  - A **framework** for achieving universal goals through targeted means.
  - An **intervention strategy.**
    - Repairs social cleavages not just distribution.
  - A **communications strategy.**
    - Employs strategic communications regarding universal goals and targeted approaches to inform the allocation of resources and policy approaches.

Types of Strategies

- Universal programs alone are not truly universal, and are often based on a non-universal standard.
  - Example: social security. Able-bodied white males working outside the home full-time for pay.

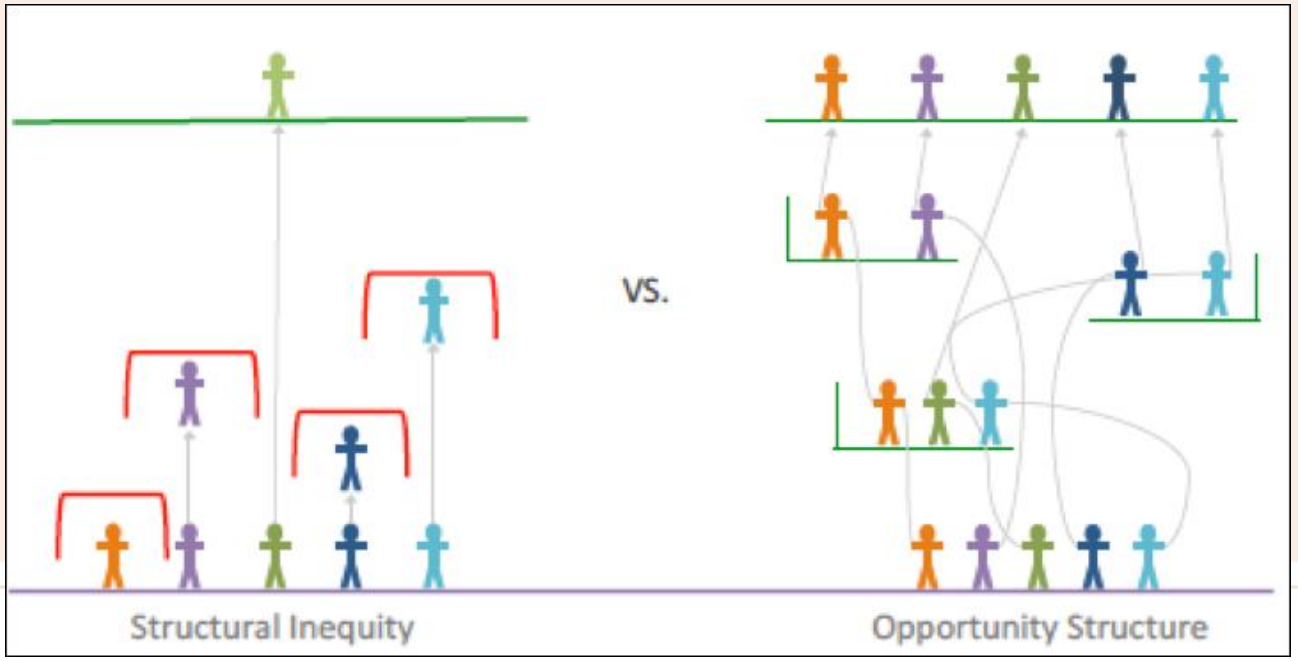
- Targeted programs alone are not desirable because they appear to show favoritism toward a certain group, thus stigmatizing them.

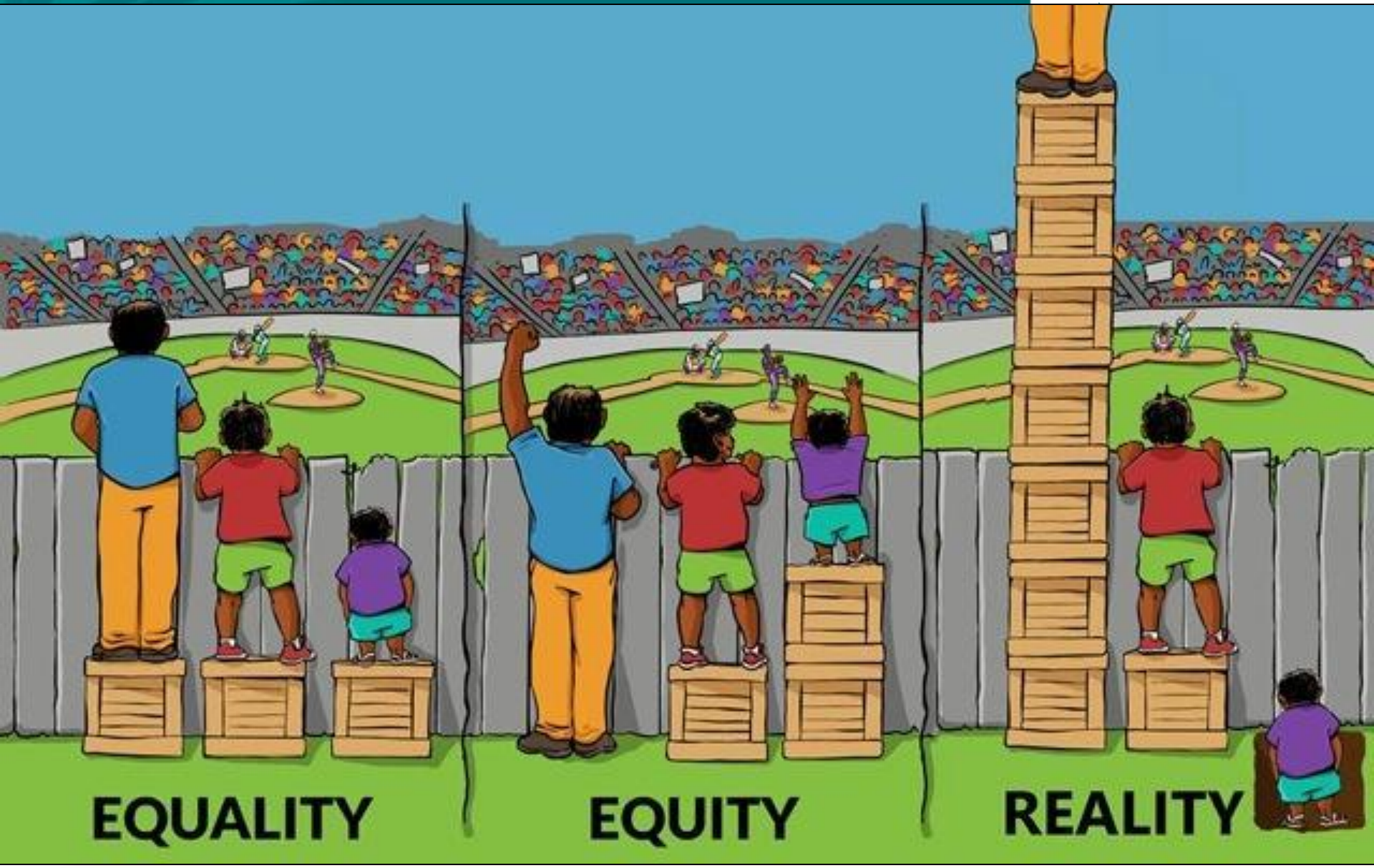
- Targeted universalism recognizes racial disparities, while acknowledging their presence within a larger inequitable, institutional framework. Set a benchmark for all.

Targeted Universalism, 5 Steps

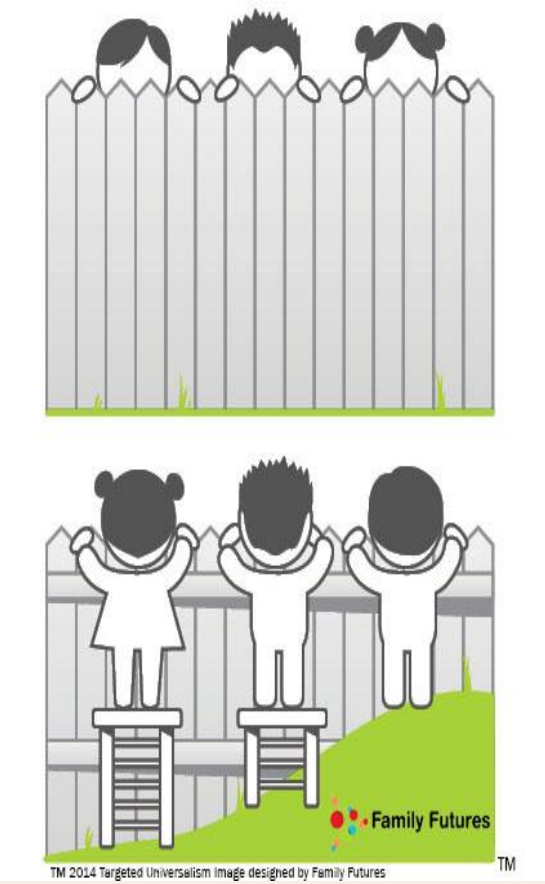
haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

1. Articulate a particular goal based upon a robust understanding and analysis of the problem at hand.
2. Assess difference of general population from universal goal.
3. Assess particular geographies and population segments divergence from goal.
4. Assess barriers to achieving the goal for each group/geography.
5. Craft targeted processes to each group to reach universal goal.




EQUALITY
EQUITY
REALITY

Envisioning Alternatives

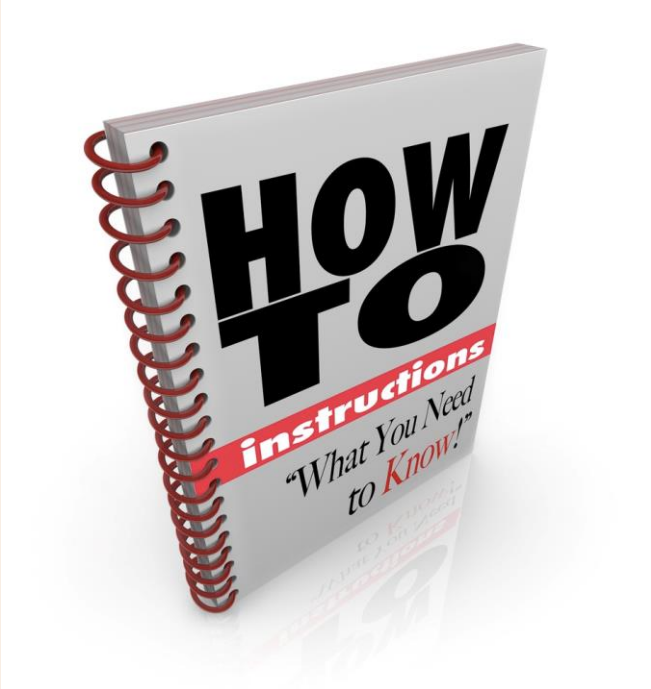


- Targeted Universalism creates a universal goal and targets strategies based on where and how people are situated.
- Equity 1.0 focuses on closing gaps.
- See the difference?

Image credit: Family Futures

How can we achieve racial and ethnic fairness in the courts?

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY



Knowing that structural inclusion, (specifically, racial and ethnic fairness in the courts), is our goal, what strategies and methods should we employ to achieve our goal?

The next portion of this presentation will examine what works and what doesn't work with regards to improving and achieving racial and ethnic fairness.

Colorblindness

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Colorblindness: While it seems logical that preventing people from "noticing" or talking about race would prevent racism/racialization, research shows the opposite – race is more likely to affect our decision making when it's unacknowledged.

Credit: 3 ½ Minutes, Ten Bullets, Discussion Guide, The Perception Institute

Asking questions about race during voir dire.

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

A defendant has a constitutional right to ask questions about race during voir dire in certain circumstances.

-SCOTUS case Turner v. Murray held that defendants in capital cases involving interracial crime have a right under the Eight Amendment to voir dire jurors about racial bias.

Asking questions about race during voir dire.

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Voir dire is being used as a promising way of educating jurors about implicit bias.

There are two approaches 1) open ended asking questions such as "what was your most significant encounter with a person from another race?" or explaining the concept of implicit bias to them and asking for their reaction and thoughts on the concept; or 2) more specific questions aimed at eliciting feedback that would expose implicit bias. Recent SCOTUS cases Pena-Rodriguez v. Colorado and Buck v. Davis allow questions about racial bias.

Workplace trainings on Implicit Bias

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Workplace trainings on implicit bias have become increasingly popular and common place. But, do they work? The answer is that *it depends*…

Psychology professor and Director of the Prejudice Lab at University of Wisconsin, Patricia Devine, has spent the last few years developing, testing, and refining trainings that do work.

Workplace trainings on Implicit Bias

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

"Trying to ignore differences makes discrimination worse. Humans see age and gender and skin color: That's vision. Humans have associations about these categories: That's culture. And human's use these associations to make judgements: That's **habit**- something you can engage in without noticing." – Patricia Devine

Devine's successful workshops have focused on breaking these harmful habits. To break a habit, you have to be aware of it, be motivated to change it, and have a strategy for replacing bad habits with new innocuous habits.

Workshops that work.

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Devine's successful workshop is a semi-interactive two hour training.

The session walks participants through the science of how people can and do act in biased ways without realizing it, engages participants in discussion of how these ideas show up in / relate to their personal lives, and offers ideas for substitute habits and stereotypes to replace harmful ones.

Strategies that work for changing your own habits of the mind…

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- ✓ Treat bias for what it is- a behavior to be overcome- not as merely a condition that can be adjusted. Practice, practice, practice.
- ✓ Look for situational reasons for a person's behavior, rather than letting unconscious stereotypes about a person's group drive your decision making.
- ✓ Seek out and interact with people who belong to groups unlike your own. Positive intergroup contact is a powerful way to change our stereotypes and bad habits of the mind.
- ✓ Question the narratives in the news and media, they are often incredibly biased.

Social and Institutional Strategies that work.

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

- ✓ When engaging with people in dialogue on race, avoid blame and personal attacks. When people feel attacked, they shut down.
- ✓ Frame bias as normal, but unacceptable.
- ✓ Engage with institutions, not just individuals. Aim to reinforce ideas within broader organizations.

4 Ideas for addressing bias in the courts

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

1. Make trainings on implicit bias mandatory.

2. Engage potential jurors in discussion on race, bias, and their personal lives.

3. Remove barriers to belonging AND practice intentional and affirmative strategies that promote belonging.

4. Utilize structural interventions AS WELL AS individual interventions.

4 More ideas for addressing bias in the courts

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

1. Make courtroom personnel reflect the composition of the community.

2. Implement affirmative rules for jury pool composition.

3. Replace the focus on intent with a focus on impact, e.g. disparate impact claims.

4. Collect, keep, and analyze data.

4 Things you can start doing immediately

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

1. Continue to educate yourself on race and bias.

2. Engage in discussions about race and bias with other people.

3. Commit to inclusion by signing onto our new Social Compact.

4. Become a change agent.

A New Social Compact

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Becoming a Change Agent

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Recognize limitations:

- The legal framing of a claim has the potential to restrict inquiry into the nature and depth of a problem

- Traditional non-discrimination rule enforcement models encourage lawyers and organizations to see issues as potential legal claims rather than as problems in need of systemic resolution.

- Fears of liability may induce firms/institutions to adopt strategies that reduce the short term risk of legal exposure rather than strategies that address the underlying problem

    - Institutional lawyers and general counsel may be more institutionally conservative than warranted by law. Are you?

Credit: Stephen Menendian, "Innovating Inclusion: Advancing Racial Equity in an era of Structural Racism."

Public Law

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

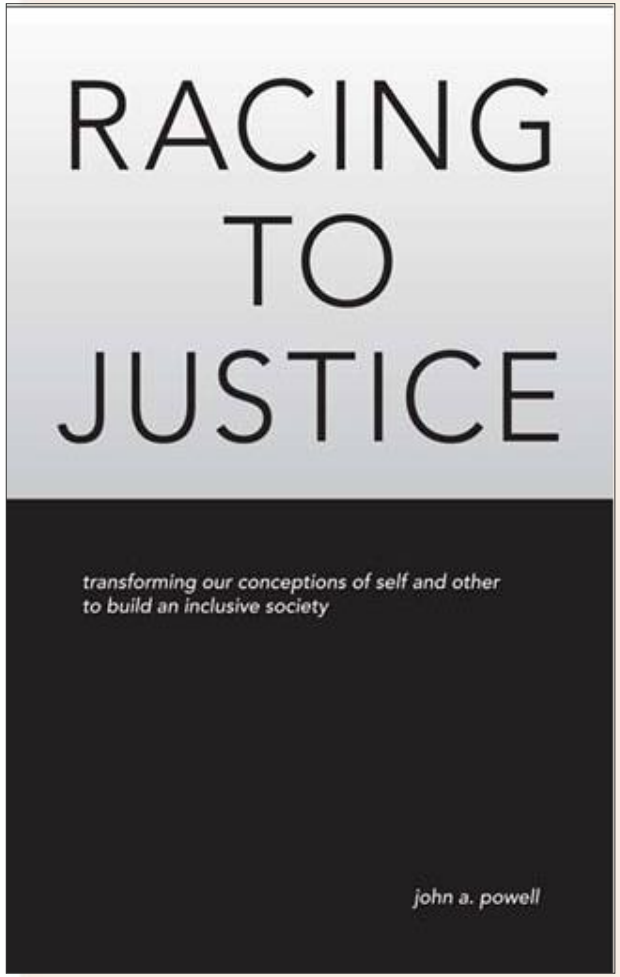
- Even within government institutions, attorneys can serve as change agents. We can work with community groups and in courts to advance institutional change.
    - There may be a need for institutional coordination in situations in which authority is dispersed among many different institutions.
- As advocates, we need to be prepared to make multi-institutional arguments and demonstrate the complex layers of institutional behavior as courts reach liability decisions and consider possible remedies
- Attorneys also need to be cognizant of the ways in which our work may support or undermine efforts to dismantle racialized hierarchies.

Credit: Stephen Menendian, “Innovating Inclusion: Advancing Racial Equity in an era of Structural Racism.”

Closing thoughts & remarks

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY



For more information, visit:
http://www.iupress.indiana.edu/catalog/806639

Like the Haas Institute on Facebook!
www.facebook.com/haasinstitute

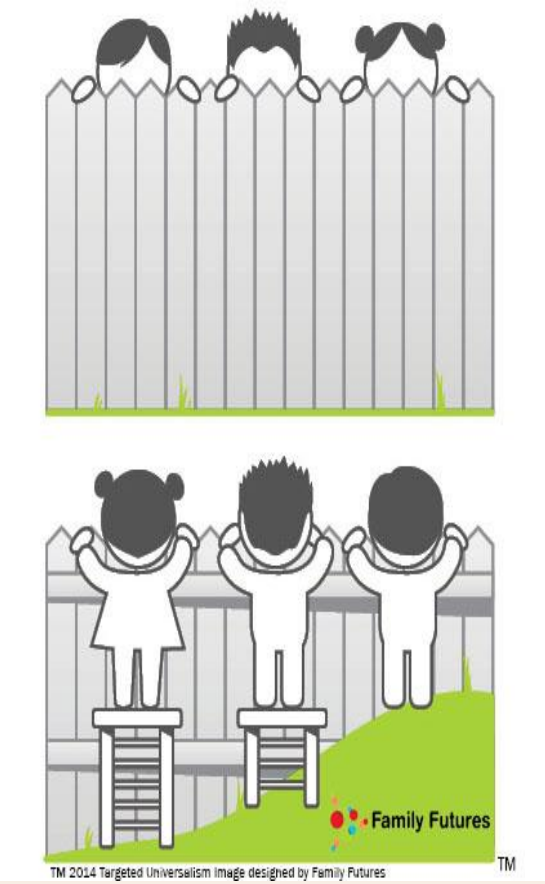
haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

Face Priming

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

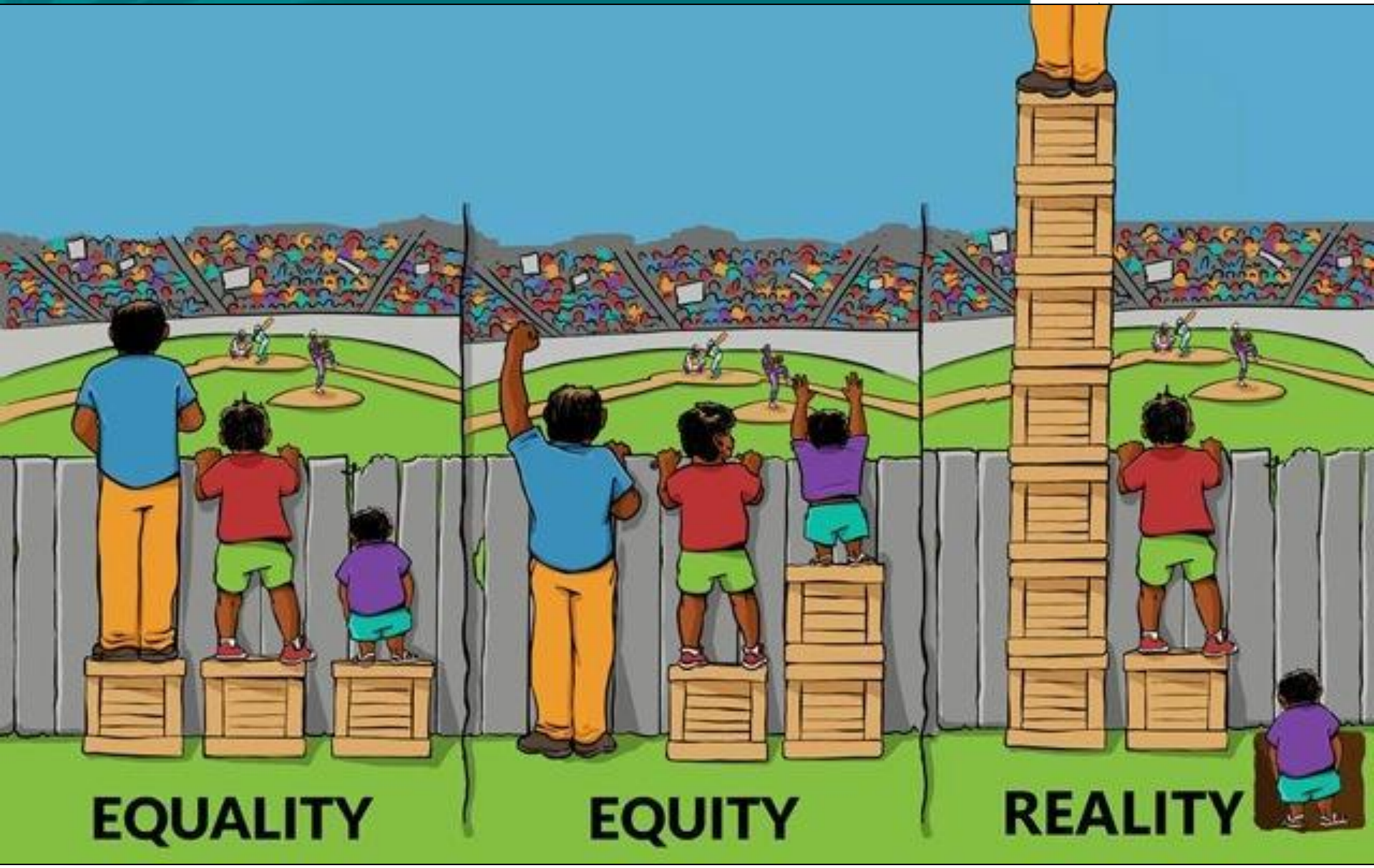
Face Priming (Slow Motion)

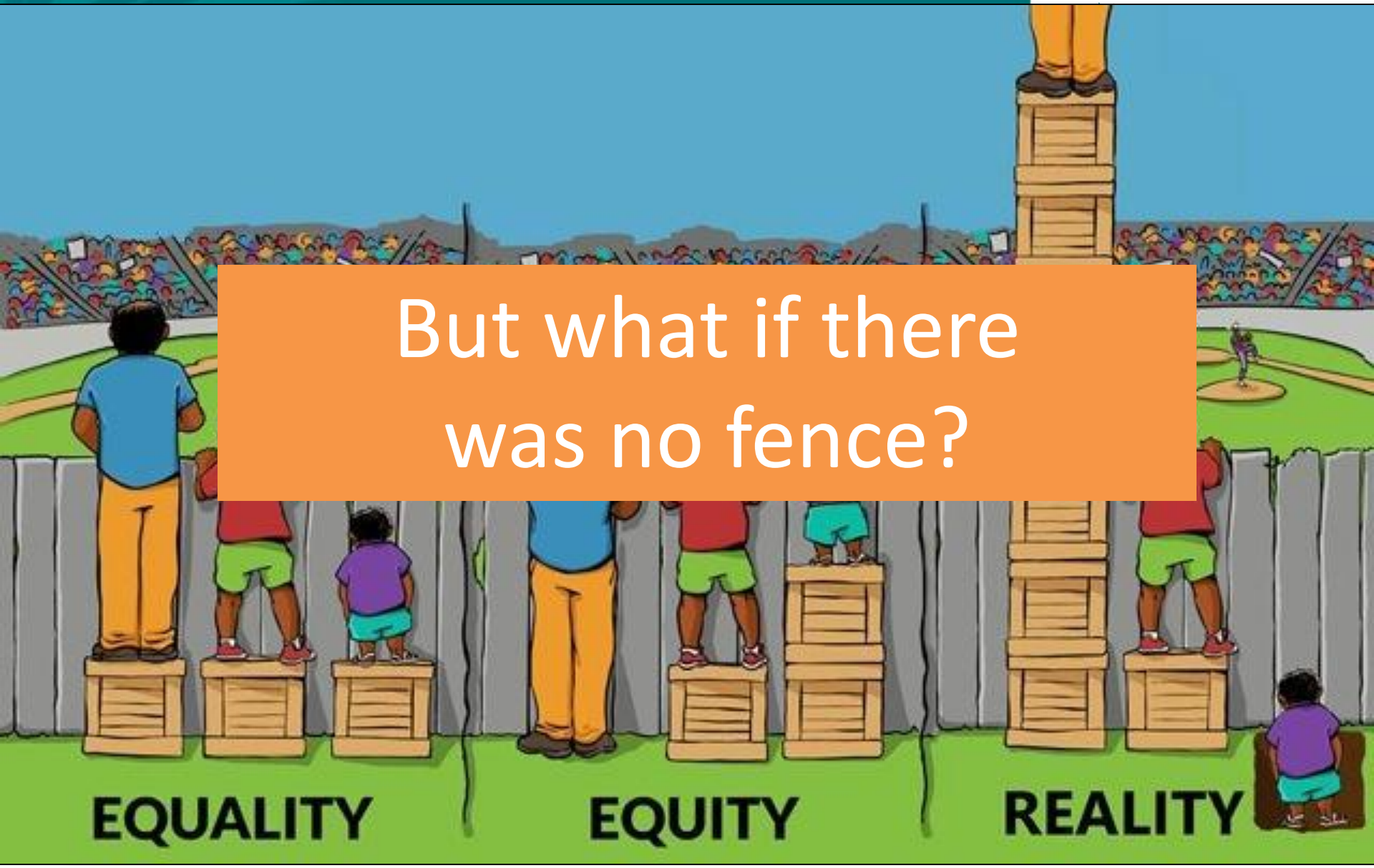
Envisioning Alternatives



- Targeted Universalism creates a universal goal and targets strategies based on where and how people are situated.
- Equity 1.0 focuses on closing gaps.
- See the difference?

Image credit: Family Futures


EQUALITY
EQUITY
REALITY

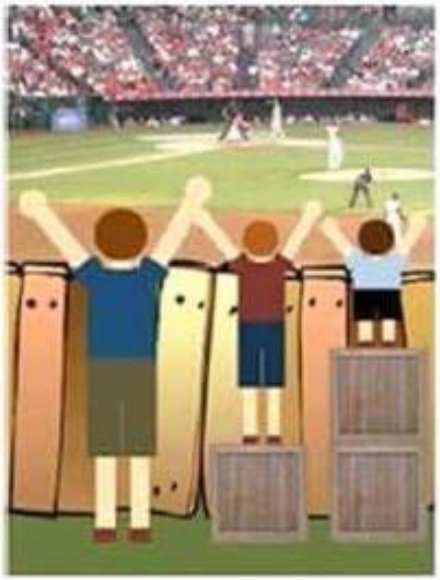

But what if there was no fence?
EQUALITY
EQUITY
REALITY

Targeted Universalism & Equity 2.0

haas institute
FOR A FAIR AND INCLUSIVE SOCIETY

EQUALITY VERSUS EQUITY

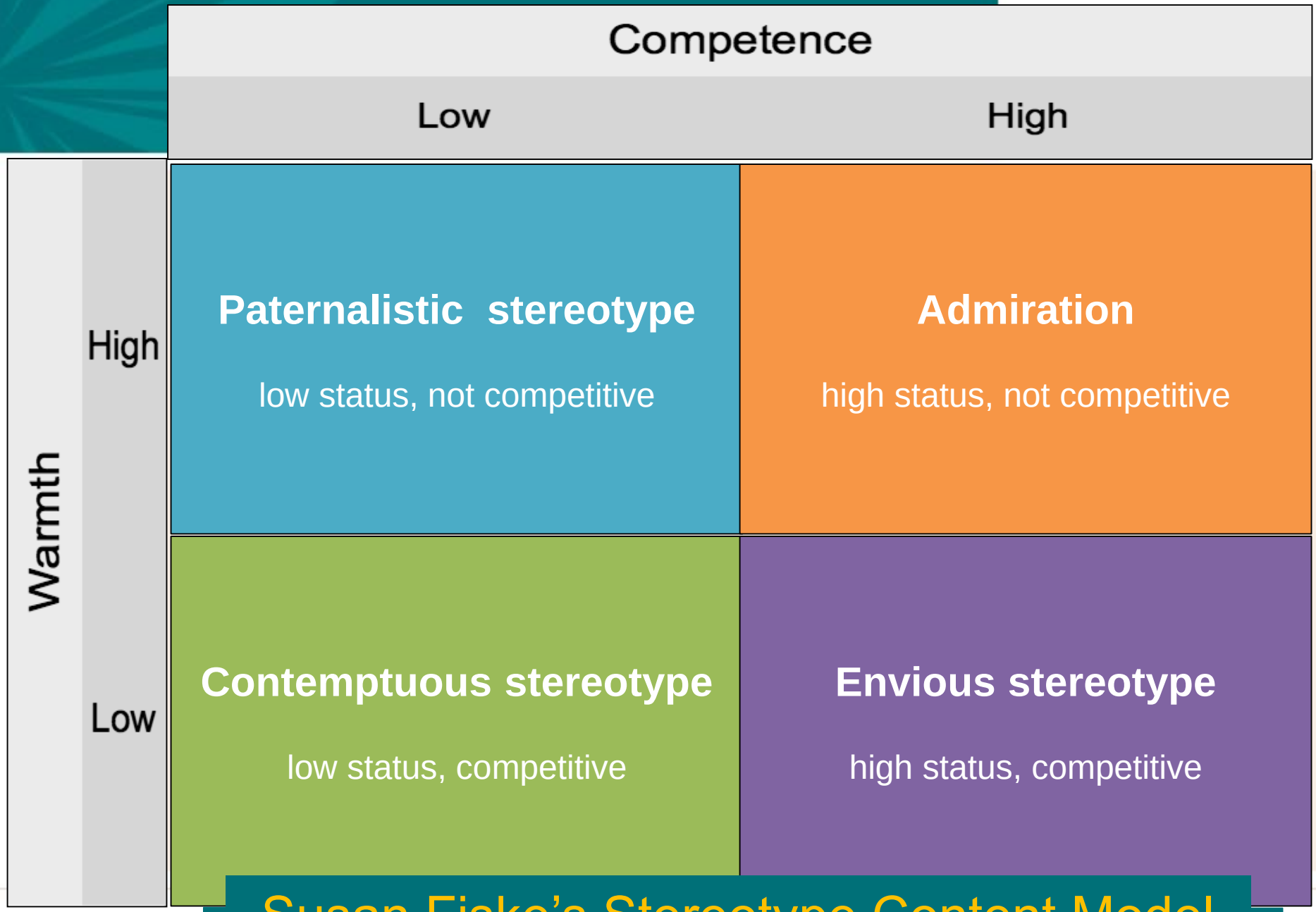
In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.

In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

Image credit: Family Futures



Susan Fiske's Stereotype Content Model